



2012 Mid-Year Report on Activities

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Introduction

On January 10, 2011, Governor John R. Kasich signed Executive Order 2011-01K establishing the Common Sense Initiative (CSI) Office and assigning this important task to Lt. Governor Mary Taylor. The Common Sense Initiative is a process for independently evaluating the economic impact of state agency regulations on Ohio businesses.

The Executive Order stated explicitly that Ohio's business community is a partner in the state's success. As such, while regulations play an important role in promoting fair competition and protecting the public, regulations should also facilitate economic growth. Ohio's regulatory process should be built on the foundations of transparency, accountability, and performance. Finally, the priority of a strong regulatory system should be *compliance*, not *punishment*.

In implementing the Executive Order, Lt. Governor Taylor has placed a premium on the principles of transparency and accountability. The CSI Office has been designed to function as a partnership between the Administration, state agencies, the business community, and the public to develop a regulatory framework that balances the important need for regulation with the equally important need to promote economic development and job creation. As such, in March of 2011, Lt. Governor Taylor developed a strategic plan to guide the operations of the CSI Office and to serve as the basis for future reporting. The CSI Office will formally report twice each year on its activities and on its progress toward meeting the objectives in the Strategic Plan.

This Mid-Year Report focuses on updates to Goals 1 and 2. These two goals represent the substantive operations of the CSI Office – the rule review process initiated in January 2012 and the accomplishments of the Office through direct outreach to businesses – and thus lend themselves to more frequent evaluation. The CSI goals dealing with the culture of state agencies, communication of CSI efforts, and impact on Ohio's business climate are more appropriate for annual evaluation. In many cases, the data used to measure results for these goals is not available on a basis more frequent than annually.

As described in the Strategic Plan, the work of the Common Sense Initiative (CSI) Office has been based on the following four principles:

1. Regulations should facilitate, not hinder, economic growth.
2. Regulations should be transparent and responsive.
3. Compliance should be as easy and inexpensive as possible.
4. Regulations should be enforced fairly and consistently.

Goal 1: Develop a CSI process that is efficient, credible, and effective

Measurables:

1. <u>Number of regulations reviewed</u>	529
2. <u>Number of rule packages reviewed</u>	52
3. <u>Number of CSI recommendations issued</u>	18
4. <u>Number of revised Business Impact Analyses received</u>	17
5. <u>CSI turnaround times</u>	
• Average length of public comment period	19 days
• Average length of time for CSI response	34 days
6. <u>Percentage of recommendations implemented</u>	100%
7. <u>Number of motions to invalidate by JCARR</u>	0
8. <u>Number of comments received through the electronic notification system</u>	72
9. <u>Number of business-impacting rules rescinded or amended</u>	249

Description: The CSI Office commenced formal rule reviews on January 1, 2012. The measurables cited above were originally established in our Strategic Plan and relate to rule reviews completed during the first half of Calendar Year 2012.

Measurables (1) and (2) above represent a high-level view of the CSI rule review intake and production for the first six months of 2012. The CSI process allows agencies to submit and analyze their rules as packages, so volume was measured both ways. The Office completed reviews of 52 draft rule packages, consisting of 529 total rules. According to JCARR, this number represents approximately a 55 percent decrease in the year-to-date 10-year average. While this large decrease in typical rule filings may not be sustainable over the long term, it indicates that agencies understand and consider the CSI process before making decisions to draft and submit rules to JCARR. Comparing rule filings with historical averages will be a measure that CSI will continue to use for Goal 1.

Measurable (3) shows the total number of recommendations issued for rule packages submitted to CSI by state agencies, boards, and commissions. Recommendations are issued by CSI in a formal memo and generally suggest revisions that the submitting agency should make to the draft rules or its Business Impact Analysis. In one case, the Office recommended that the agency withdraw the rules and not file with JCARR. Although the 18 recommendations issued for the

52 rule packages is less than expected, it reflects the fact that the CSI process involves significant work with agencies to resolve concerns identified by CSI staff, and potentially resolve problems before they lead to recommendations or rejected rule packages. This factor is demonstrated by the fact that for 17 of the 52 rule packages reviewed, the agency was required to submit a revised Business Impact Analysis to meet the CSI standards.

Measurable (5) presents the average turnaround time between when a rule package is submitted to CSI and when the recommendation memo is issued by the CSI Office. On average, CSI issued its recommendations in approximately 34 days. The Office uses two different benchmarks to evaluate its turnaround times. First, we use 22 days as the minimum amount of time between when an agency submits a rule to CSI and when it is allowed by statute to file that rule with JCARR.¹ Second, the CSI Office does not issue recommendations until the rule's comment period has ended to ensure that all stakeholder comments are considered in the CSI review. In the first six months, the average comment period lasted 19 days.

The actual CSI turnaround times represent a number of factors and are partially a result of a new process that requires learning through experience, for agency staff and CSI staff. Ultimately, CSI's objective is to reduce its turnaround times on rule packages.

While many of these measures relate to the CSI process and the quantity of rules reviewed by CSI, measurables (6) and (7) reflect the substance of the reviews. At this point, no agency has refused to accept and implement a recommendation issued by the CSI Office, and JCARR has not moved to invalidate a rule that was vetted through the CSI process and found to be justified by the regulatory purpose. The purpose of the CSI process is to ensure that the adverse impact to businesses from agency rules is justified by the regulatory purpose, and these measures indicate that the process is working to this point.

For the 52 total rule packages reviewed during this time period, CSI has received a total of 72 electronic comments submitted by stakeholders. We believe that this number will increase over the time as more and more stakeholders become aware of the CSI process and take advantage of their opportunity to participate through the Ohio Business Gateway (www.business.ohio.gov/reform).

Finally, 249 rules that impacted business were either rescinded or amended through the CSI review process through the first six months of 2012.

¹ Ohio Revised Code 121.82 states that an agency may not file with JCARR until at least the 16th business day after it submits the rule to CSI for review. The number of calendar days may vary depending on holidays and the number of weekends that fall within the timeframe. 22 calendar days is the most common conversion, so for comparison sake, CSI uses 22 calendar days as a benchmark.

Goal 2: Impact a significant number of regulations based on the Vision statement for the CSI Office

Measurables:

Number of regulatory suggestions received through CSI contacts

Through the first six months of 2012, the CSI Office received 46 suggestions and requests for assistance through the CSI email at CSIOhio@governor.ohio.gov. Liquor Permitting issues and Taxes tied for the highest percentage of submissions at 10 percent each.

Discussion:

As discussed in the 2011 CSI Report on Activities, it has become evident that the CSI Office truly operates along two tracks, and those tracks have different measures and different ways of impacting the business climate in Ohio. The formal rule review track is described and measured in Goal 1. The second track is more of a bottom-up approach, where the CSI Office seeks input from businesses about the regulations that most directly impact their ability to operate, grow, and create jobs in Ohio. On this track, CSI activities may focus on assisting a single business (serving an ombuds function to help navigate the state bureaucracy), one industry sector, or a broader swath of the business community.

When it was first announced, the CSI Office experienced a heavy inflow of suggestions and requests for assistance. As might be expected, it appears that the volume has subsided to a lower but steady level. The 46 suggestions received through email is identical to the number received for the last six months of 2011. Additional suggestions and requests have been received via direct outreach to businesses by the Lt. Governor, staff, and the Small Business Advisory Council. However, the leveling off of submissions suggests that work remains to be done in increasing awareness of the Office among businesses and the general public, and using the communications resources available – web site, social media, etc. – to drive suggestions to CSI.

The 2011 Report on Activities also discussed that the second track of CSI operations is less quantifiable in terms of number of regulations impacted, but is more focused on communicating stories of CSI successes to demonstrate change to the business community. The cumulative effect of these “success stories,” if significant, will help change the perception of Ohio’s regulatory climate and show the impact of CSI. As such, the success of Goal 2 includes a discussion of specific regulatory initiatives, along with specified measurables.

2012 CSI Initiatives

Alcohol Requirements for Food Manufacturers – Just a few weeks into its operations, CSI Ohio heard about a company in northern Ohio that manufactures soups, sauces, and purees for national restaurant chains; and some recipes use alcohol. The company had the potential to expand, but Ohio’s liquor law required food manufacturers to purchase alcohol in retail containers and at retail prices. CSI Ohio worked with the Department of Commerce and the General Assembly to

get the law changed in 2011, and now Custom Culinary – as well as Ohio companies we heard from that produce ice cream and jellies – can purchase alcohol wholesale for their recipes. In June 2012, Custom Culinary broke ground on its \$5 million expansion which will create more than 17 new Ohio jobs.

Clinical Research Faculty Certificates – Prior law allowed academic medical institutions to appoint internationally-trained doctors to their faculties. These institutions bring in top-level talent from around the world under this certificate to teach and conduct cutting-edge research at their institutions. However, these doctors could previously only stay for three years, so we either forced world-renowned researchers to leave Ohio or, more often, we weren't able to attract them in the first place knowing that they could only stay three years. In 2011, the spouse of a doctor with an expiring certificate contacted CSI seeking help. CSI brought all stakeholders together to draft legislation to ensure that the State Medical Board has the authority it needs to protect the public, but to allow these special certificates to be renewed so that we can keep these leaders in their fields in Ohio. In the process, an additional alternative license for eminent physicians not as directly tied to research was developed. The Clinical Research Faculty Certificate was enacted in June 2012. Already we have heard about prominent researchers staying in Ohio under the certificate, and new doctors practicing highly advanced medical research being recruited to Ohio.

Sales Tax Refund – CSI heard from a company that had mistakenly paid \$65,000 in sales tax – instead of simply filing, the company also paid when it didn't need to. It learned about the mistake when it started bouncing checks. The company's CPA contacted the state and was told that it could get a refund in about six months. This small company could not afford a \$65,000 hit to its cash flow for six months. CSI immediately contacted the Department of Taxation and got them to expedite the refund so the company could continue to operate.

Residential Building Code – The Residential Construction Advisory Committee (RCAC) and the Board of Building Standards (BBS) have been working since April 2009 to develop a revised Residential Building Code. CSI was aware that this had historically been a source of tension within the homebuilding industry, which did not feel that the regulatory bodies had justified any new requirements, or their associated costs, in the Code. Working through the CSI process, the BBS was required to complete a Business Impact Analysis in which it outlined the changes being proposed, any new costs from these changes, and why the changes were necessary. Using this analysis, CSI brought the BBS, the Dept. of Commerce, and the Ohio Homebuilders Association together to ensure that industry questions were answered and input was considered. By fleshing out these issues, a consensus was achieved around a Code – supported by the homebuilding industry – that protects homebuyers while minimizing the costs. The new Code completed the JCARR rulemaking process in June 2012 and will take effect in 2013.

Liquor Permit Transfer – CSI worked with the owners of a sports pub that was having difficulty obtaining the necessary inspection and completing the requisite paperwork to allow the transfer of a liquor permit. CSI worked closely with the Department of Commerce to determine what

remaining paperwork needed to be completed and get the inspection scheduled in a timely manner.

Medicaid Certification – The owner of a child care center in Butler County that offers a range of behavioral health services for children was having difficulty achieving Medicaid certification. CSI facilitated a number of conversations between the owner and staff at the Ohio Department of Mental Health (ODMH). From the business perspective, the dilemma was that the business needed to bill Medicaid in order to operate, but there was a strict level of experience needed in order to be certified. In the end, ODMH agreed to accept preliminary accreditation and issued a fee waiver. Along the way, ODMH also toured the center and provided technical assistance to the center to help find the right services to bill under Medicaid.

Declaration of Material Assistance – CSI received numerous suggestions through the CSI email address and also in person at various meetings and events to do away with the Declaration of Material Assistance. The form was legislatively mandated in the aftermath of the September 11, 2001 terror attacks, and required any entity doing business with the State to declare whether it provided material assistance to terrorist organizations. Though well-intentioned, in practice the form had uncovered no terrorist organizations and caused administrative headaches for the handful of businesses that were unlucky enough to incorrectly fill out the form. CSI worked with the Department of Public Safety to have this requirement repealed in the Mid-Biennium Budget Review legislation enacted in June 2012.

Fire Sprinkler Systems – CSI was contacted by a business that had been informed by its local fire department that it needed to install a prohibitively expensive fire sprinkler system at its adult daycare business. Working with CSI, the Department of Commerce convened a meeting between the business owner, the fire department, and the state's Board of Building Standards. This meeting allowed the business owner to demonstrate to the appropriate regulators that expensive retrofitting of the space with fire sprinklers was not required to ensure the safety of the business' employees and customers.

Building Permits – CSI heard from the City of Van Wert about a number of local businesses who felt that the state's building department was getting in the way of their ability to expand their businesses. The Lt. Governor, along with appropriate staff from the Department of Commerce, traveled to Van Wert in the fall of 2011 to meet with these business owners, discuss their concerns, identify solutions, and share developments regarding the state's permitting process. At this meeting, a business owner who had experienced significant delay spoke passionately about the barriers he had experienced. Following the meeting, the CSI Office worked closely with Commerce and were able to wrap up his permit in less than two weeks. As a result, the company announced a \$2 million expansion in June 2012.

Ohio Racing Commission VLT Rules – In March 2012, the Ohio Racing Commission submitted draft rules to license people who operate video lottery terminals (VLTs) at Ohio horse racing tracks. These employees were already licensed by the Ohio Lottery Commission. In reviewing

the Commission’s proposed rules and Business Impact Analysis, CSI determined that the new license created a duplicative process and additional fees, while failing to promote any unique and/or important regulatory benefit. As a result, CSI recommended that the Racing Commission and Lottery Commission work together to develop a single license for video lottery agents, a process for both commissions to have access to licensee information, and an agreement on the proper division of revenues. The Racing Commission subsequently submitted revised rules premised on the recommendations of the CSI Office – a single licensing process for VLT sales agents whereby one application is submitted to the Lottery Commission for dual licensure with the Racing and Lottery Commissions.

Licensure Examination Fees – The State Medical Board of Ohio proposed to eliminate a fee carry-over for certain applicants who applied for but failed to take the December 2011 massage therapy examination (the last Board-issued examination before transitioning to a national examination). The Board originally was going to carry-over the \$250 fee those applicants paid and instead apply it to the \$150 certification fee if and when the applicant successfully passed the national examination. This was going to result in a \$100 loss for each of the 53 applicants who failed to take the December exam. The proposed rule eliminating this carry-over would have resulted in a \$250 loss for each of the applicants. CSI recommended that the Board refund the \$250 fee to each of the 53 applicants, and allow them to reapply under the new examination system like all other applicants. Ultimately, the Board agreed to refund a total of \$13,250 to the applicants.

Microdistillery Regulation (HB 243) – Ohio law only allowed three manufacturing permits for microdistilleries in the entire state, effectively stifling an industry that represents an emerging trend throughout the country. CSI heard about this issue and supported legislation that had been introduced to expand the number of these permits allowed, and to allow for product tasting on site. These changes create more opportunity for businesses in Ohio, and also provide an ability to generate interest through the activities allowed on site. As a result, we believe there will be jobs created, local products sold, and additional demand for Ohio agricultural products to be used in the process. HB 243 took effect in March 2012.

EPA Duplicative Testing – Ohio EPA was trying to make a small asphalt company conduct new air emissions testing as part of a permit, even though the company had just recently conducted the same testing. The second round of testing would have cost approximately \$20,000 and provided no additional environmental benefit. CSI brought the parties together, encouraged OEPA to review the permit language, and the Agency agreed that the duplicative testing was unnecessary. The company will not be required to do another round of testing until shortly before the permit expires.